

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

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REMARKS

Applicants hereby cancel claims 26, 46 and 49-50. Accordingly, claims 1-25, 27-42, and 51-66 are pending in the present application.

Claims 26 and 46 stand rejected under 35 U.S.C. §103(a) for obviousness over U.S. Patent No. 5,842,118 to Wood, Jr. in view of U.S. Patent No. 5,649,296 to MacLellan et al., U.S. Patent No. 3,733,602 to Cuckler et al. and U.S. Patent No. 5,799,010 to Lomp et al. Claims 49-50 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood, Jr. in view of MacLellan, Cuckler and U.S. Patent No. 6,353,729 to Bassirat. Claims 1-3, 6-8, 11-13, 16-18, 21-22, 24-25, 27-29, 33-37, 41-42, 51-53, 55-57, and 64-65 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood, Jr. in view of MacLellan and U.S. Patent No. 6,058,374 to Guthrie et al. Claims 4-5, 14-15, 23, 30-32, 38-40, and 54 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood, Jr. in view of MacLellan and Guthrie and further in view of Lomp. Claims 9-10 and 19-20 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood, Jr. in view of MacLellan and Guthrie and further in view of Bassirat. Claims 58-63 and 66 stand rejected under 35 U.S.C. §103(a) for obviousness over Wood, Jr. in view of MacLellan, Guthrie and U.S. Patent No. 6,084,530 to Pidwerbetsky et al.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See, e.g., MPEP §2143 (8th ed., rev. 5).

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

Referring to claim 1, Applicants respectfully submit that there is insufficient proper rationale for combining the teachings of Gunthrie with MacLellan and Wood and the 103 rejection is improper for at least this reason.

Initially, Applicants respectfully submit that the Office has taken inconsistent positions in formulating the 103 rejection. For example, referring to page 4 of the Action, the Office states that the *MacLellan teaches an interrogator 103 remotely connected via LAN 102 to extend the range of communication*. The Office further states at page 5 of the Action that the combination of MacLellan and Wood is proper to extend the range of communication. At page 6 of the Action, the Office alleges that it is obvious to modify the combination of Wood and MacLellan according to the teachings of Gunthrie *to extend the range of communication without a local area network*. Applicants respectfully submit that the rejection is improper inasmuch as the teachings of Gunthrie of extending range without a LAN to be combined are directly contrary to the MacLellan teachings relied upon (use of a LAN to extend range) to combine Wood and MacLellan. Applicants respectfully submit it is improper to modify the combination of Wood and MacLellan with the arrangement of Gunthrie which is void of LAN when the rationale for the combination of Wood and MacLellan is the use of the LAN of MacLellan to extend the range of communication. The teachings of Gunthrie void of the LAN are directly opposite and contrary to the explicit teachings of use of a LAN to extend range of MacLellan and which were combined with Wood (to use a LAN to extend range).

In addition, Applicants submit that the teachings of the combination of Wood and MacLellan which use the LAN to extend the communications range *teaches away* from the combination proposed by the Office to extend range according to Gunthrie without a LAN.

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

The combination of Wood and MacLellan teaches away from constructions void of LANs when the combination of Wood and MacLellan has been expressly indicated to be appropriate because of the use of the LAN of MacLellan to extend range.

Furthermore, the combination of Wood and MacLellan is already configured to provide extended range as noted by the Office. Accordingly, the teachings of Gunthrie to extend the range are redundant to the already combined unmodified arrangement of Wood and MacLellan. Applicants respectfully submit that it is improper to combine the Gunthrie teachings when the teachings of Wood and MacLellan being modified already disclose the benefits for which Gunthrie is presented (i.e., extended range of communications). Applicants respectfully submit that the alleged rationale for combining Gunthrie is improper and fails to establish a proper prima facie 103 rejection.

Referring to page 6 of the Action, the Office additionally alleges that the combination of Gunthrie is appropriate to make the system "flexible and easy to implement." However, the Office Action is void of any evidence or explanation as to how the combination of the Gunthrie teachings provide any benefit or improvement over the combination of Wood and MacLellan without the system or that Gunthrie renders the system flexible and easy to implement as baldly alleged.

The Office at page 5 of the Action relies upon DSSS and OOK teachings of Gunthrie as teaching the claimed modulation. However, both Wood and MacLellan already teach use of direct sequence spread spectrum modulation (Wood at col. 7, line 12, col. 8, line 4, MacLellan at col. 3, line 55) as well as additional modulation techniques (Wood at col. 8, line 15, MacLellan at col. 4, line 45). The modulation of Gunthrie is redundant to teachings of both references of the combination of MacLellan and Wood and Applicants respectfully

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

submit that one of ordinary skill in the art would not look to Gunthrie for meaningful teachings when the combination of MacLellan and Wood already discloses the teachings for which Gunthrie is presented.

Applicants respectfully submit that the Office has failed to establish a proper prima facie 103 rejection of claim 1 for at least the above-mentioned numerous and compelling reasons.

The claims which depend from independent claim 1 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

For example, referring to claim 3, Applicants respectfully submit the Office has failed to establish a proper prima facie rejection inasmuch as positively recited limitations are not disclosed nor suggested by the prior art even if the references are combined. More specifically, the claims recite the communication station including adjustment circuitry configured to receive the forward link communication signal from the communication circuitry and to adjust an electrical characteristic of the forward link communication signal which is not disclosed nor suggested by the prior art.

The Examiner at page 6 of the Action relies upon the teachings of Fig. 8 and col. 7, lines 26-47 of MacLellan as allegedly disclosing the claimed adjustment circuitry. A careful read of MacLellan including col. 7, lines 25-47 illustrate that a prior art device uses the full AM modulation scheme 601 of Fig. 8 while the inventive aspects of MacLellan (an entirely different communications system) utilize the partial AM modulation scheme 602 to implement full duplex communications. A CW tone is absent from the prior art scheme 601 half of the time as shown in Fig. 8 while a CW tone is present at all times either at 50% or

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

100% power permitting full duplex with the carrier being always present. Usage of 100% or 50% modulation depends upon whether the system is a prior art system or the system of MacLellan. These teachings of MacLellan baldly refer to different modulation schemes and fail to disclose or suggest the limitations of the claims including the adjustment circuitry.

More specifically, the Office appears to recite at page 6 of the Action with respect to claim 3 the 100% AM or 50% AM (reference 601 of Fig. 8) or 100% AM and 50% AM (reference 602 of Fig. 8) as allegedly disclosing the claimed adjustment. However, the Office has failed to identify specific reference teachings which allegedly disclose the different limitations of the claims. For example, the Office has failed to identify any reference in such teachings of MacLellan regarding the different AM modulation schemes or provide any explanation as to how the different AM modulation schemes are to be considered to disclose or suggest the claimed *adjustment circuitry of the communication station* in combination with the other limitations. The Office has failed to identify teachings of the claimed *adjustment circuitry of the communication station receiving the forward link communication signal* or the adjustment of the *electrical characteristic of the forward link communication signal*. Baldy referring to a plurality of different AM modulation schemes of MacLellan of the prior art and the invention of MacLellan may not be fairly considered to disclose or suggest the specific limitations of the claims and Applicants respectfully submit the rejection of the claims is in error for at least this reason.

Referring to dependent claim 51, the system comprises circuitry of the housing comprising a transmitter configured to generate a modulated signal, and the communication station is configured to receive and convert the modulated signal from a first communication medium type to a second communication medium type.

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

On page 4 of the Action, the Office states that interrogator 103 of MacLellan corresponds to the claimed communication station which is remotely located from application processor 101 of Fig. 1. However, MacLellan is void of disclosing that the interrogators 103 or 104 (identified as teaching the communication station) receive a modulated signal. To the contrary, MacLellan only discloses a modulator 202 within interrogator 103 itself.

Referring to page 7 of the Action and in support of the rejection of claim 51, the Office baldly alleges that MacLellan teaches a modulated digital signal out of computer 101 and that the signal within circuits 101-103 is a modulated signal. Further with respect to page 3 of the Action, the Office alleges that one skilled in the art recognizes "modulation signal", whenever there is transmission of a signal, is inherently the modulation of data signal with continuous wave or carrier frequency. Applicants respectfully disagree with the reliance upon inherency.

For proper reliance upon inherency, *the Office **must provide** a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied prior art.* *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). It is *not necessary* for application processor 101 and interrogator 103 of Fig. 1 of MacLellan to communicate using modulated signals via LAN 102. In particular, MacLellan clearly discloses interrogator 103 modulating signals using modulator 202 of Fig. 2 but fails to disclose any modulation of signals using application processor 101 or communication of modulated signals via LAN 102. To the contrary, baseband communications are routinely used to implement communications via a local area network such as LAN 102 wherein digital signals are

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

provided upon a cable without modulation of any kind. In view of the failure of MacLellan to disclose modulation of signals intermediate 101 and 103 and the existence of alternative available communications intermediate application processor 101 and interrogator 103 apart from modulation (e.g., baseband without modulation), it is clear the claimed limitations of *communicating a modulated signal intermediate circuitry of a housing and a communication station remotely located with respect to the housing and the circuitry do not necessarily flow from the teachings of the prior art* as is required for proper reliance upon inherency.

Limitations of the claims regarding communication of a modulated signal intermediate the housing and the communication station are not inherent in view of alternatives including communicating unmodulated baseband signals over a LAN. The reliance upon inherency is improper and accordingly the prior art fails to disclose or suggest limitations of the pending claims including communication of modulated signals intermediate the housing and the remotely located communication station in combination with the claimed conversion of the modulated signal from a first communication medium type to a second communication medium type using the communication station. Applicants respectfully request withdrawal of the rejection of the claims in view of the improper reliance upon inherency and the failure of the prior art to disclose positively recited limitations of the claims.

Referring to claim 53, the Office has failed to recite any teachings of MacLellan as disclosing a wired medium configured to communicate *a modulated signal* intermediate the application processor 101 and the interrogator 103. Further, any reliance upon inherency is improper inasmuch as the limitations of the wired medium configured to

Appl. No. 09/285,073
Response to 2/20/2007 Office Action

communicate the modulated signal intermediate the housing and the communication station do not necessarily flow from the teachings of MacLellan and in consideration of the usage of alternative communications including baseband communications without modulation. Finally, the combination including Gunthrie teaches communication of modulated signals which are wireless signals and fails to teach or suggest the claimed limitations of the *communication circuitry comprising a wired medium configured to communicate the forward link communication signal comprising a modulated signal intermediate the housing and the communication station.*

Applicants respectfully request withdrawal of the rejection of claim 53 for the above-mentioned additional reasons.

Referring to independent claims 11, 21, 27, and 35, Applicants respectfully submit there is insufficient motivation to combine the teachings of Gunthrie with the combined teachings of Wood and MacLellan and the 103 rejection is improper for at least this reason.

The claims which depend from independent claims 11, 21, 27, and 35 are in condition for allowance for the reasons discussed above with respect to the independent claims as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to independent claim 58, the Office alleges at page 15 of the Action that the combination of U.S. Patent No. 6,084,530 to Pidwerbetsky is proper because Wood suggests generating a forward link communication signal and Pidwerbetsky teaches generating a polling signal using circuitry of a source for purpose of reducing collision of responding communications. Applicants respectfully submit the motivation is insufficient,

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

not supported by objective evidence, and the Office has failed to establish a proper prima facie rejection.

In particular, the Office has cited no authority or evidence in support of allegations of motivation to combine the reference teachings. Referring to page 15 of the Action, there is no teachings in the prior art cited *in support of the position that* Pidwerbetsky generates a polling signal to reduce collisions of responding communications as baldly alleged. In fact, Applicants have electronically searched and failed to uncover any reference to "collision" or "reduction of collisions" in Pidwerbetsky as baldly alleged by the Office. The motivational rationale cited by the Office is not supported by the prior art or any other evidence and the rejection is improper for at least this reason.

In addition, the Office points to no evidence that the system of Wood, MacLellan or Gunthrie suffers from collisions of responding communications to motivate one to look to Pidwerbetsky for meaningful teachings for solutions with respect to collisions in communications. Further, even if one were motivated to look to Pidwerbetsky, Applicants have failed to uncover any teachings in Pidwerbetsky relevant to reducing collisions. Finally, there is no evidence of record that modifications to the references of Wood, MacLellan or Gunthrie per Pidwerbetsky would result in any improvement whatsoever to motivate one make the proposed combination.

Applicants respectfully submit there is insufficient proper rationale for combining the prior art teachings and the 103 rejection is improper for at least this reason.

The claims which depend from independent claim 58 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

Referring to dependent claim 60, claim 60 depends from claims 58 and 59 and recites the *communications media comprises a wire and electromagnetic energy for communicating respective ones of the polling signals of the first and second communication medium types*. In combination with the teachings of base claim 58, the polling signals of the first and second communication medium types are defined as modulated signals. Even if the prior art teachings are combined, the combination fails to disclose or suggest communication of a *modulated polling signal using communication medium types including a wire and electromagnetic energy*.

The Office alleges on page 15 of the Action that "all subject matters in claim 60 are disclosed in claim 8, and therefore rejection of the subject matters expressed in claim 60 are met by references and associated arguments applied to rejection of claim 8." Applicants respectfully submit the rejection of claim 60 set forth by the Office is not a proper *prima facie* rejection.

In particular, claim 60 recites limitations including a wire and electromagnetic energy which are not "disclosed in claim 8" as alleged by the Office. The Office has failed to recite *prior art teachings* which allegedly disclose teachings of claim 60 in support of the rejection of claim 60. The limitations of claim 60 are not disclosed by the prior art when properly considered with the limitations of claims 58 and 59.

Applicants respectfully submit the rejection of claim 60 is improper for at least this reason.

Applicants respectfully request allowance of all pending claims.

Appl. No. 09/265,073
Response to 2/20/2007 Office Action

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Dated: 7/20/07

By: 

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